

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for)
Termination of Probation Against:)
)
TERRY A. GILLIAN, M.D.)
Physician's and Surgeon's)
Certificate No. A 29523)
)
Respondent.)
)
_____)

Case No. 26-2011-219992

**DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION**

No action having been taken on the petition for reconsideration, filed by George L. Strasser on behalf of respondent, Terry A. Gillian, M.D., and the time for action having expired at 5 p.m. on September 27, 2012, the petition is deemed denied by operation of law.

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

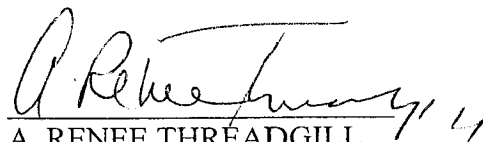
In the Matter of the Petition for Termination)	
Of Probation of:)	
)	MBC No.26-2011-219992
TERRY A. GILLIAN, M.D.)	OAH No. 2012040865
)	
Physician's & Surgeon's Certificate)	ORDER GRANTING STAY
No. A 29523)	
)	(Gov't Code Section 11521)
<u>Respondent</u>)	

Attorney, George L. Strasser on behalf of respondent, Terry A. Gillian, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of August 28, 2012.

Execution is stayed until September 27, 2012.

This stay is granted solely for the purpose of allowing the Respondent to file a Petition for Reconsideration.

DATED: August 21, 2012.


A. RENEE THREADGILL
Chief of Enforcement
Medical Board of California

By: Shelton Duruisseau
Shelton Duruisseau, Ph.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Termination of Probation of:

TERRY A. GILLIAN, M.D.,

Physician's and Surgeon's Certificate
No. A29523

Respondent.

Case No. 26-2011-219992

OAH No. 2012040865

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on June 26, 2012, in Oakland, California.

Respondent Terry A. Gillian, M.D., represented himself.

Kerry Weisel, Deputy Attorney General, represented the Office of the Attorney General, Department of Justice.

The record closed on June 26, 2012.

FACTUAL FINDINGS

Background

1. On September 15, 1975, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A29523 to Terry A. Gillian, M.D. (Respondent). It is currently renewed until February 28, 2013. Respondent is primarily a hand surgeon.

2. Effective May 5, 2008, the Board revoked the certificate, stayed the revocation, and placed it on probation for seven years pursuant to terms and conditions. The discipline followed an evidentiary hearing and was grounded in findings of gross negligence and/or repeated acts of negligence concerning the care of four patients. The terms included completion of the PACE program, as well as other educational conditions.

3. On March 27, 2009, a First Amended Accusation and Petition to Revoke Probation was filed. Effective November 9, 2009, the Board again revoked the certificate, stayed the revocation, and placed it on probation for eight years and three months pursuant to terms and conditions. This action followed a stipulated settlement. Respondent had violated probation by not timely enrolling in and completing PACE. In addition, by stipulation he admitted that if the allegations were proven, they would establish gross negligence in the care of one patient. The 2009 Order resulted in a total probation term of nine years and three months.

4. On March 25, 2009, Respondent's New York medical license was revoked based upon the California Board's disciplinary actions.

Probation compliance

5. The terms of Respondent's probation include continuing medical education, completion of the PACE Medical Record Keeping Course and the PACE Clinical Training Program, and practice monitoring. As of March 2012, Respondent was in compliance with probation. He completed 74.25 hours of education in 2011, the Medical Record Keeping Course (2008), and PACE (Phase II, June 19, 2009). His practice monitor has been Harold F. Grooms, M.D., who has submitted timely positive reports.

6. On approximately December 14, 2011, Respondent submitted a Petition for Penalty Relief, requesting that probation be terminated. This hearing followed.

7. Respondent submitted three letters of reference with his Petition, plus an additional letter from practice monitor Dr. Grooms. A Petition for Penalty Relief Report was prepared by Board staff Ann Hutchinson, Office Technician, on March 27, 2012. Hutchinson telephoned each of the reference letter authors and confirmed that they had written the letters. She emailed copies of the Decision and Order for them to review.

Respondent's evidence

8. Noteworthy amongst the continuing medical education engaged in by Respondent, is that he earned a Masters of Medical Management degree in May, 2011. The coursework was completed at the Marshall School of Business, University of Southern California, Los Angeles, from January 2010 to March 2011.

9. Helen M. Jones, M.D., authored a letter dated December 14, 2010. She is an internist. Dr. Jones has known Respondent for 23 years, and has referred patients to him for plastic, reconstructive, and hand surgery. As of March 19, 2012, she was still reviewing the information sent by Hutchinson. It is therefore unclear whether she stands by her recommendation of Respondent.

10. Denard M. Fobbs, M.D., has known Respondent professionally since 1982. He is the Medical Director of Fobbs' Lifepoint Institute for Women - the Laser Center for

Endometriosis, Pelvic Pain and Infertility. His letter, dated October 23, 2011, reveals that he is familiar with Respondent's discipline history, although it appears that Dr. Fobbs was not aware that the probation revocation action was grounded in patient care as well as the issue of timely probation compliance. Dr. Fobbs pointed out that Respondent has continued to practice through his probation, and opined that his continued practice will be an asset to the community.

11. Shay B. Dean, M.D., practices plastic surgery in Marina del Rey and met Respondent in 2007 or 2008. In a letter dated November 28, 2011, he described courses that Respondent has taken and changes he has made in his treatment practices. Dr. Dean feels "confident that [Respondent] will follow national standards for treatment for upper extremity injuries . . ." and recommends early termination of probation. Dr. Dean shared with Hutchinson his belief that people should be given second chances.

12. Dr. Grooms wrote on December 13, 2011, that he supports early termination, but if called upon, will continue to serve as Respondent's practice monitor.

13. Respondent testified that he thinks he should be released from probation "because I have followed all of the guidelines." Respondent has worked very hard to take care of his patients and the community. He added that "to this date I am not sure why I was found guilty given the experts I had testify for me and the experts who testified for them." Nonetheless, he learned a great deal from the PACE courses, and related that the instructors at PACE "were very nice and kind."

Respondent added that he has changed some of his practices as a result of his experiences. He does not do multiple surgeries at once, even if it means that he could use the same incision. He will do the additional procedures another time instead. Respondent takes a very conservative approach now, "because the Board demanded it and it is reasonable to do that."

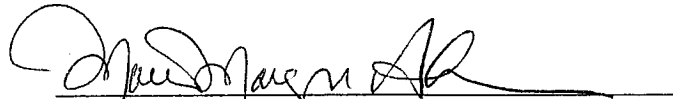
LEGAL CONCLUSION

The burden of proof is on Respondent to show by clear and convincing evidence that probation should be terminated early. Respondent did not meet his burden of proof; good cause was not established for early termination of Respondent's term of probation. Discipline was imposed in this matter for serious violations of the standard of care concerning five patients. Respondent has recently been in compliance with probation, and has engaged in impressive continuing medical education efforts. These efforts, however, are insufficient to demonstrate that termination of probation is warranted just halfway through the term. It is also noted that it is not entirely clear, given Respondent's testimony, that he is convinced that his care was wanting. He continues to reference the original hearing, wondering why the Board was convinced by one expert and not the other. All things considered, it is concluded that it would be against the public interest to terminate probation at this time.

ORDER

The petition of Respondent Terry A. Gillian, M.D., for termination of probation is denied.

DATED: July 3, 2012


MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings